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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ████████████████████
████████████████████
████████████████████

DECISION

Case #: MDD - 199954

PRELIMINARY RECITALS

Pursuant to a petition filed on September 17, 2020, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services regarding MDD, a hearing was held on December 22, 2020, by telephone.

The issue for determination is whether Petitioner is disabled for purposes of medical assistance disability.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ████████████████████
████████████████████
████████████████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By:

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. Petitioner applied for disability through the state MA program.

3. By letter dated January 13, 2020, the Disability Determination Bureau (DDB) found that Petitioner was not disabled for **state** disability MA. Petitioner sought reconsideration on March 5, 2020 but the DDB affirmed its determination on or about September 16, 2020. The file was then forwarded to the Division of Hearings and Appeals to schedule a hearing for Petitioner. That hearing is the subject of this decision.
4. In 2019, Petitioner also applied for **federal** Social Security Supplemental Security Income (SSI – Title 16). That application was processed separately through the Social Security Administration.
5. The Social Security Administration determined Petitioner was not eligible for SSI on December 5, 2019. Petitioner is currently appealing that federal decision.
6. Petitioner does not allege any new medical impairment other than the impairments considered in the Social Security decision.

DISCUSSION

The standards for **state** MA disability and **federal** SSDI and SSI disability benefits are the same, a finding of no disability for SSDI/SSI purposes made within 12 months of the MA application is binding on a state MA agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions which have been presented to the Social Security Administration. None of those exceptions apply here. See 42 C.F.R. § 435.541(a); see also U.S. Department of Health and Human Services commentary, 54 Fed. Reg. 236 (1989).

Because Petitioner has been denied SSDI/SSI following a finding of no disability by the federal Social Security Administration within one year of her application for state MA disability, I must conclude I do not have jurisdiction to consider the merits of Petitioner's disability appeal. Therefore, it must be determined Petitioner is not eligible for state MA disability at this time.

Petitioner filed a federal appeal. Should Petitioner prevail at her federal hearing and is found disabled, she would qualify as disabled for state MA.

CONCLUSIONS OF LAW

That Petitioner is not disabled as that term is used for state disability MA purposes pursuant to Wis. Stat. §49.47(4).

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of January, 2021

\s _____
Nicole Bjork
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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5005 University Avenue
Madison, WI 53705-5400

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The preceding decision was sent to the following parties on January 14, 2021.

Racine County Department of Human Services
Disability Determination Bureau